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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of

WILLIAM HENRY EDWARDS,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF

THE STATE OF SOUTH CAROLINA

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the First Amendment right to free speech is unconstitutionally abridged by the imposition of a disciplinary sanction upon an attorney for breaching the confidentiality of his own disciplinary proceeding.

2. Whether Rule 20 of the South Carolina Rule on Disciplinary Procedure, providing for the confidentiality of disciplinary proceedings, is unconstitutional in that the rule authorized closed proceedings in violation of due process of law, as guaranteed by the Fourteenth Amendment

to the United States Constitution, and in that the rule authorizes an unlawful prior restraint on speech, in violation of the First Amendment to the United States Constitution.

3. Whether the exercise of investigative prosecutorial, adjudicative, and testimonial functions by one person in a state disciplinary proceeding, when such proceedings have been held to be judicial proceedings and not administrative proceedings, violates due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

4. Whether imposition of a disciplinary sanction upon an attorney for violating Rule 20, the rule on confidentiality, and Rule 26, the rule on immunity, when allegations of violating those rules were not contained in the formal Complaint noticing charges of misconduct, violates procedural due process as guaranteed by the Fourteenth Amendment to the Unites States Constitution.

5. Whether the right to recover damages for injury to reputation, secured by the Fourteenth Amendment to the United States Constitution, is unconstitutionally

abridged by a State's applicability of an absolute privilege from suit to a grievance filed against an attorney alleging misconduct, when that grievance is filed by a law clerk directly supervised by another attorney, and the purpose of the privilege is to encourage the submission of grievances by lay persons who might otherwise fear reprisal.

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In the Matter of

William Henry Edwards,

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PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF

THE STATE OF SOUTH CAROLINA

Petitioner, William Henry Edwards, respectfully prays that a writ of certiorari issue to review the decision of the South Carolina Supreme Court entered in this proceeding on April 19, 1983.

OPINION BELOW

The unpublished report of the hearing panel, entitled Panel Report, appears as Appendix C hereto, and the unpublished Certification of the Record Before the Board of Commissioners on Grievances and Discipline to the South Carolina Supreme Court appears as Appendix D hereto.

The opinion of the Supreme Court of South Carolina, reported as In the Matter of William Henry Edwards, _____ S.C. _____, 302 S.E. 2d 339 (1983), appears as Appendix E hereto.

JURISDICTIONAL STATEMENT

The opinion of the South Carolina Supreme Court was filed on April 19, 1983. This petition for a writ of certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3).

UNITED STATES CONSTITUTIONAL AND SOUTH CAROLINA STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for á redress of grievances.

The Fourteenth Amendment to the United States Constitution, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of th United States and of the State wherein they reside. No state shall make or enforce any law which shall abreidge the privileges or immunities of citizens

of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The South Carolina Rule on Disciplinary Procedure, Section 20:

See Appendix A.

The South Carolina Rule on Disciplinary Procedure, Section 26 A:

26. Immunity and Privilege

A. Complaints or Grievances submitted to the Board or Executive Committee or testimony or documents with respect thereto shall be absolutely privileged, and no lawsuti predicated thereon may be instituted against any complainant or witness.

The South Carolina Rule on Disciplinary Procedure - Statutes Authorizing a Fusion of Functions:

See Appendix B.

STATEMENT OF THE CASE

A law clerk was dispatched on an errand by his employer, an attorney, to the office of Petitioner, also an attorney. At the office, the law clerk became involved in an incident with someone other than Petitioner. Thereafter, the employer called the Petitioner's office and spoke to a colleague of Petitioner, indicating that a grievance would be filed against the Petitioner for assault and battery.

The grievance was filed with the Board of Commissioners on Grievances and Discipline on January 29, 1982. See Appendix F. The Chairman of the Board began an investigation and requested

Petitioner to respond to the charges. On February 8th, 1982, Petitioner responded as requested. Fearing the employer's connections with the Board, though, and wanting the protection that public scrutiny would bring to the proceedings, Petitioner, by separate letter the same day, pursuant to Rule 20 of the Rule on Disciplinary Procedure, requested that all proceedings be made public. See Appendix G.

Thereafter, the Petitioner instituted civil and criminal actions against the law clerk for libel and slander, contending that the grievance was false and malicious.

On February 17, 1982, the Chairman of the Board, along with the rest of the Executive Committee, directed the

filing of a formal Complaint against Petitioner. The Chairman of the Board then directed the Attorney General's Office to serve as prosecutor. Petitioner was served with the Complaint on July 19, 1982. Contained therein were charges that the filing of the civil and criminal actions constituted misconduct. No charges were noticed in the Complaint that Petitioner had violated Rule 20, the rule on confidentiality, or Rule 26, the rule on immunity. See Appendix H.

Hearing panel members were chosen by the Chairman of the Board, and a hearing ensued on November 16th, 1982. At the hearing, Petitioner learned for the first time that a request to open the proceedings did not automatically open them, as a reading of Rule 20 would

seemingly indicate. He was instead informed, by the Chairman of the Board, that such requests could be denied and in fact his had.

At the hearing, Petitioner continued his insistence on the right to an open proceeding. Petitioner also maintained that his right to bring suit for recovery of damages for injury to his reputation had been wrongfully abridged.

At the hearing, too, the Chairman of the Board assumed the role of a witness against the Petitioner, testifying that shortly after the institution of the civil and criminal actions, he had called the Petitioner and informed him that the actions would violate the rule on confidentiality.

The hearing panel in its December 23, 1982 report found that the rule on

confidentiality provided for a request that could be denied at the discretion of the Board, and that in fact no request had ever been granted. See Appendix C, p. 9.

The panel found the Petitioner had violated the rule on confidentiality and the rule on immunity. It recommended discipline by contempt procedures for violation of the rule on confidentiality and discipline by public reprimand for violation of the rule on immunity.

Petitioner filed timely exceptions to these findings on January 24, 1983. See Appendix I.

On February 1, 1983, the Chairman of the Board filed the Certification of the Record Before the Board of Commissioners on Grievances and Discipline to the South Carolina Supreme Court. A re-

port of the Executive Committee's independent adjudication is contained therein. See Appendix D. The review resulted in an unanimous adoption of the panel report. The Chairman of the Board chaired this adjudication.

On April 19, 1983, the South Carolina Supreme Court publicly reprimanded Petitioner for violating the rule on confidentiality and the rule on immunity. See Appendix E. It is from that decision that this appeal is taken.

Petitioner admits that at no time prior to the submission of this petition did he raise the questions as to the lack of notice or the exercise of prosecutorial, adjudicative, and testimonial functions by one person in a judicial proceeding. Petitioner submits that this

Court has jurisdiction of these questions nevertheless, under the Court's power to notice plain error. Petitioner submits that these questions address errors of constitutional proportions regarding fundamental unfairness in the proceedings. Additionally, Petitioner submits that the true nature of state bar disciplinary proceedings was not known until this Court's March 23rd, 1983, decision of District of Columbia Court of Appeals v. Feldman, _____U.S._____, 103 S. Ct. 1303 (1983), wherein the Court first illuminated the judicial nature of disciplinary proceedings and clearly distinguished them from administrative proceedings. Hence the question concerning the fusion of functions in a judicial proceeding could not have been previously raised by Petitioner.

Petitioner submits that the remaining questions have all been timely and properly raised in the proceedings below so as to give this Court jurisdiction to review the decision on writ of certiorari.

REASONS FOR GRANTING THE WRIT

WHETHER THE FIRST AMENDMENT RIGHT TO FREE SPEECH IS UNCONSTITUTIONALLY ABRIDGED BY THE IMPOSITION OF A DISCIPLINARY SANCTION UPON AN ATTORNEY FOR BREACHING THE CONFIDENTIALITY OF HIS OWN DISCIPLINARY PROCEEDING.

WHETHER RULE 20 OF THE SOUTH CAROLINA RULE ON DISCIPLINARY PROCEDURE, PROVIDING FOR THE CONFIDENTIALITY OF DISCIPLINARY PROCEEDINGS, IS UNCONSTITUTIONAL IN THAT THE RULE AUTHORIZES CLOSED PROCEEDINGS IN VIOLATION OF DUE PROCESS OF LAW, AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND IN THAT THE RULE AUTHORIZED AN UNLAWFUL PRIOR RESTRAINT ON SPEECH, IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

This case presents a constitutional challenge to the validity of statutes providing for the confidentiality of disciplinary proceedings. The question is of broad significance as such provisions exist in many states: approximately eighteen states provide for closed proceedings and

twenty-one states provide for closed proceedings subject to waiver. Only eleven states mandate public proceedings National Law Journal, June 27, 1983.

Petitioner contends that such provisions authorizing the holding of secret tribunals violate due process of law. Petitioner further contends that these provisions constitute an unlawful prior restraint on speech.

Petitioner was publicly reprimanded by the Supreme Court of South Carolina for the filing of civil and criminal actions against one who had submitted a grievance against him. The South Carolina Suspreme Court held that the conduct of Petitioner violated the rule on immunity providing for an absolute privilege for such grievances. The Court additionally held that the very same conduct of

Petitioner also violated the rule on confidentiality: that the filing of the actions breached the confidentiality of the disciplinary proceeding grievance had started.

Petitioner was publicly reprimanded for revealing the existence of the disciplinary proceeding to those officials - the Judge, Solicitor, etc. --with thom he filed the actions with. Petitioner was publicly reprimanded for communicating information about his disciplinary proceeding to these officials as he filed the actions.

Petitioner was publicly reprimanded for his speech.

This decision of the South Carolina Supreme Court is in direct conflict with decisions of this Court. Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978); Bridges

v. California, 314 U.S. 252 (1941); Wood v. Georgia, 370 U.S.375 (1962).

It is true that Courts have a duty to protect their proceedings from disruption. Any disruption to the proceedings, however, would be precluded by the rule on immunity, providing for an absolute privilege from suit. (Petitioner contends, though, that no disruption to the disciplinary proceedings would occur even if the rule on immunity was breached.)

Clearly, then, the decision of the South Carolina Supreme Court is erroneous and this Court must grant the petition for a writ of certiorari to correct the decision below. The speech of Petitioner, in communicating to the Court officials and Judges as he filed the civil and criminal actions, in no way constituted a clear

and present danger to the orderly administration of justice of the disciplinary proceedings to warrant the imposition of a disciplinary sanction. Petitioner submits that no State interest can justify this abridgement of speech. Landmark Communications, Inc., supra.

Petitioner also contends that Rule 20, the rule on confidentiality, constitutes an unlawful prior restraint on speech. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976). Petitioner desired to go to the newspapers about his disciplinary proceeding; he wanted to speak about it to friends. The rule chilled his speech and he remained silent.

Petitioner also contends that the confidentiality provision is unconstitutional in that the authorizing

of secret tribunals violates due process of law. Petitioner feared the connections the employer of the law clerk had with the Board. He requested the opening of the proceedings to afford himself of the protection of public scrutiny.

In re Oliver, 333 U.S. 257 (1948), this Court stated that trials in this country are open for the same reasons Petitioner wanted his open:

> The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber and to the French monarchy's abuse of the lettre de cachet...
>
> ...The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power...
>
> ...Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account...

Id., at 268-271

Additionally, Petitioner contends the constitutional right of the press and the general public to gain access to the proceedings, see Richmond Newspapers, Inc. v. Virginia, 448, U.S. 555 (1980), was abridged as he was simultaneously being denied the benefits thereof.

The legal profession has sunk in the public's esteem in recent years. Lawyers are seen by many as a disreputable group. Maintaining a shroud of secrecy over the regulation of attorney conduct can only serve to maintain that image.

The Court should grant the petition for a writ of certiorari to hear these important questions.

WHETHER THE EXERCISE OF INVESTIGATIVE, PROSECUTORIAL, ADJUDICATIVE, AND TESTI-

MONIAL FUNCTIONS BY ONE PERSON IN A STATE DISCIPLINARY PROCEEDING, WHEN SUCH PROCEEDINGS HAVE BEEN HELD TO BE JUDICIAL PROCEEDINGS AND NOT ADMINISTRATIVE PROCEEDINGS, VIOLATES DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A "fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136 (1955). Petitioner submits his trial was not only fair --it was a mockery of justice. The Court is asked to exercise its supervisory powers and correct the proceedings below.

In Withrow v. Larkin, 421 U.S. 35 (1975), the Court held that the exercise by one body of investigative, prosecutorial, and adjudicative functions in an administrative proceeding, does not violate due process.

In Goldberg v. Kelly, 397 U.S 254 (1969), the Court said due process requirements depend, in part, upon the

nature of the proceeding. Id., at 263.

Last June, in Middlesex County Ethics Committee v. Garden, etc., ___U.S ___, 102 S. Ct. 2515 (1982), the Court held that state bar disciplinary proceedings are judicial in nature. In District of Columbia Court of Appeals v. Feldman, ___U.S. ___, 103 S.Ct. 1303 (1983), the Court differentiated an administrative proceeding from a judicial proceeding and again made clear that disciplinary proceedings were judic ial proceedings and were not administrative proceedings.

Petitioner submits that the aforesaid fusion of functions that does not result in a denial of due process in an administrative proceeding, unquestionably results in a denial of due process in a judicial proceeding.

Petitioner further submits that such

a fusion of functions in a judicial proceeding, when all functions are exercised by the same individual, results in a patent denial of due process. The disciplinary mechanism as constituted in South Carolina allows for a fusion. See Appendix B. The Chairman of the Board of Commissioners on Grievances and Discipline investigated the grievance against Petitioner, directed (along with the other members of his Executive Committee) the issuance of the Complaint, choose the nominal prosecutor, selected the panel hearing members and (along with the other members of his Executive Committee) made an independent adjudication. The Court is asked to declare such a system unconstitutional.

Lastly, Petitioner contends that the assumption by the Chairman of the

Board of the role of a witness against Petitioner, in addition to his acting in the aforesaid capacities, renders the proceeding such a mockery of justice that this Court can not let them stand: The Chairman of the Board judged his own testimony.

Disciplinary proceedings are peculiar proceedings. Much confusion still abounds as to their nature and and as to the lack of precedural safeguards thereof. The Court should grant the petition for a writ of certiorari to illuminate due process guarantees in such proceedings. Those who spend their lives fighting for the rights of others, shouldn't be deprived of basic rights themselves.

WHETHER IMPOSITION OF A DISCIPLINARY SANCTION UPON AN ATTORNEY FOR VIOLATING RULE 20, THE RULE ON CONFIDENTIALITY, AND RULE ON IMMUNITY, WHEN ALLEGATIONS OF VIOLATING THOSE RULES WERE NOT CON-

TAINED IN THE FORMAL COMPLAINT NOTICING CHARGES OF MISCONDUCT, VIOLATES PROCEDURAL DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In re Ruffalo, 390 U.S. 591 (1968) states that in a disciplinary proceeding, fair notice of "the precise nature of the charges" is a basic component of procedural due process. Id., at 552. Petitioner was not afforded such. See Appendix H.

Petitioner submits that this fundamental error necessitates correction by the granting of the unit. The Court should not let such a miscarriage of justice stand.

WHETHER THE RIGHT TO RECOVER DAMAGES FOR INJURY TO REPUTATION, SECURED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, IS UNCONSTITUTIONALLY ABRIDGED BY A STATE'S APPLICABILITY OF AN ABSOLUTE PRIVILEGE FROM SUIT TO A GRIEVANCE FILED AGAINST AN ATTORNEY ALLEGING MISCONDUCT, WHEN THAT GRIEVANCE IS FILED BY A LAW CLERK DIRECTLY SUPERVISED BY ANOTHER ATTORNEY,

AND THE PURPOSE OF THE PRIVILEGE IS TO ENCOURAGE THE SUBMISSION OF GRIEVANCES BY LAY PERSONS WHO MIGHT OTHERWISE FEAR REPRISAL.

"Society has pervasive and strong interest in preventing and redressing attacks upon reputation," Mr. Justice Brennan, in Rosenblatt v. Baer, 383 U.S. FS, 86 (1966), wrote.

The constitutional guaranty of personal security contains within it the right to the enjoyment of a good reputation. 16 C.J.S., Constitutional Law, Section 205a. The right is secured agai nst abridgment by the States by the Fourteenth Amendment. The right is subject to regulation, provided it is reasonable. 16 C.J.S., Constitutional Law, Section 205b. Legislation or acts in violation of the rights within the constitutional guaranties are null and void. 16 C.J.S., Constitutional Law, Sec-

tion 205a.

Petitioner submits that the States' applicability of an absolute privilege to his circumstances is null and void, as unreasonable abridgment of his right to recover damages for injury to his reputation.

Petitioner contends that the Constitution guarantees him this right, and the State, in its Code of Laws, merely articulated the means by which this right could be implemented. Applicability of an absolute privilege to Petitioner's circumstances, however, is unreasonable, and thus, unconstitutioinal.

Petitioner prays that this Court grant the writ to remedy this unjustifiable restraint.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that a writ of certiorari issue to review the decision of the South Carolina Supreme Court.

Respectfully submitted,

John R. Harper, II
Attorney for Petitioner

Sandi Perry
Legal Researcher

20. Confidentiality

A. All records and proceedings involving allegations of Misconduct by an attorney shall be confidential and shall not be disclosed unless:

(1) The Respondent shall in writing request that they be public;

(2) Theinvestigation is predicated upon a conviction of the respondent for a crime imposed upon the Repondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda of the disciplinary agency, shall be public.

B. All proceedings involving allegations of disability on the part of an attorney shall be kept confidential until and unless the Supreme Court enters an Order

transferring the respondent to disability inactive status pursuant to paragraph 19 of the Rule in which case paragraph 19D & E shall apply.

C. Proceedings involving allegations of misduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant or the witness. In order to protect the interests of the complainant or the witness, the hearing panel to whom formal prosecution of an allegation of misconduct or disability of an attorney is assigned, or the Executive Committee in matters considered by it, may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of such information and direct that the proceedings be so conducted as to implement the order.

D. No persons whomsoever in any way connected with a matter before the Board, or otherwise, including witnesses, counsel, counsel's secretaries, Respondent, Board members, judicial officers, Board employees, reporters or investigators, shall mention the existence of any such proceeding, nor disclose any information pertaining thereto or discuss any testimony or evidence therein except to persons directly involved, and then only to such extent as necessary for a proper disposition of the matter. Any proceeding before the Board may be made public upon written request of the Respondent.

E. Violation of this provision shall be deemed contempt of this Court and punishable as such. All persons attending any proceedings or taking

part in any matter hereunder shall be advised of this provision upon the commencement thereof. All records and correspondence held by members of the Board at the conclusion of their respective terms of office shall be carefully screened by them. They shall deliver all essential records and correspondence, so held, to the Board for filing with the permanent records of the Board, and destroy all nonessential records having no permanent or continuing effect.

F. The Board through the Chairman may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to agencies investigating

qualifications for government employment, and to such other agencies as designated by the Court. If the Board through the Chairman decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the Board through the Chairman shall send to the attorney at his last known address a notice that information has been requested and by whom, together with a copy of the information that the Board proposes to release to the requesting agency. The Board through the Chairman shall inform the subject attorney that the information shall be released at the end of eight days unless

the attorney obtains a court order restraining such disclosure.

G. The Board through the Chairman or his designee shall transmit notice of all public discipline imposed on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank mainained by the American Bar Association.

H. All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

B. Rule on Disciplinary Procedure

2. Definitions

G. "Hearing Panel" means three members of the Board exclusive of the Executive Committee chosen by the Chairman or his designee to hear complaints.

3. Composition of Board of Commissioners on Grievances and Discipline

E. The Board shall exercise the powers and perform the duties conferred and imposed upon it by this Rule, including the power and duty:

(1) To receive, consider, and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion and to take action with respect thereto as shall be appropriate to effect the purposes of this

Rule.

4. Executive Committee, Composition and Duties

A. From the membership of the Board of Commissioners the Court shall appoint, upon the recommendation of the Chairman, four other members of the Board who shall, along with the Chairman, constitute the Executive Committee shall:

(1) Review all Grievances made against attorneys licensed to practice law in this state and conduct such investigation as it deems appropriate:

(2) Dismiss all grievances found to without foundation;

(3) Direct the insurance of Complaints;

(5) Hold informal inquiries into grievances against attorneys.

9. Investigation at Instance of Chairman: Procedure Thereunder

A. Whenever the Chairman of the Board receives a Grievance or has reason to believe that an attorney is or may be guilty of Misconduct, he may cause an investigation to be made thereof and he may:

(1) Require the attorney to respond in writing to the alleged Misconduct;

(2) Assign the investigation to a member of the Board;

(3) Assign the investigation to the the Attorney General's Office;

(4) Require witnesses to appear before the Executive Committee;

(5) Direct a Complaint be filed.

12. Hearings by Panels

C. The prosecution of a Complaint

before the hearing panel shall be handled by the Attorney General's Office unless otherwise directed by the Chairman of the Board. When deemed to be necessary or desirable, the Chairman may designate a member of the Bar to prosecute Complaints...

14. Panel Reports; Actions Thereon

A...Within twenty days after the receipt of the Panel Report either the Respondent, Attorney General, or counsel who presented the cause before the hearing panel shall file exceptions and supporting briefs, if any, to the recommended findings of fact, conclusions of law, or sanctions. After receipt of the exceptions, or in the event there are no exceptions, to the recommended findings of fact, conclusions of law and sanctions, the Executive Committee of the

Board shall at its next meeting consider the same upon the record, exceptions and briefs and:

> (3) Certify the record to the Court along with its report recommending amendments, if any, to the findings of fact or conclusions of law, along with its reasons therefor and any matter of mitigation it deems worthy of consideration as to sanctions, all of which shall be included in the certification of the Board...

Appendix C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

William H. Edwards, Sr.

and Larkin V. Campbell,

Respondents.

BEFORE THE BOARD OF

COMMISSIONER ON GRIEVANCES

AND DISCIPLINE

PANEL REPORT

This matter was commenced by service upon the Respondents of a Complaint dated July 19, 1982. The Respondents practice together in the firm of Edwards and Campbell, P.A., and it is alleged that the Respondent Campbell on January 28, 1982 committed an assault and battery upon a law clerk with the firm of Marchant, Bates, Todd and Barber. It

is further alleged that a warrant for criminal libel and slander, and a separate civil defamation action were commenced by the Respondent Edwards based solely upon a grievance filed before this Board by the law clerk as a result of the assault and battery committed by the Respondent Campbell. A hearing was held on November 16, 1982 in Columbia, South Carolina. The Respondents appeared in person and further indicated that they would also act as counsel for each other.

FINDINGS OF FACT

In the latter part of 1981 the Respondents intended to associate with attorney John R. Harper, II, in the information of a new law firm. On December 4, 1981, the Respondents and Mr. Harper entered into a contract for the sale of a building located at

2118 Lincoln Street in Columbia which the three intended to utilize as ther law office. (Respondents' Exhibit No. 1). The contract provided that the purchasers would assume a first mortgage on the property held by Henry DeVega and would obtain a second mortgage from the seller. By the specific provisions of the contract the agreement was to be consummated on January 29, 1982. Subsequently, the Respondents decided to perform some improvements on the property prior to closing and the seller contacted attorney Roy D. Bates in Columbia in order to obtain sufficient protection from possible mechanics liens.

It later develop that a problem arose with the assumption of the first mortgage held by Mr. DeVega. On January 28, 1982, Mr. Bates attempted to call the Respondents to advise them that the seller would be

willing to extend the closing deadline in light of the recent problems with assumption of the first mortgage. Mr. Bates placed a call to the Respondents' office which was later returned by Respondent Edwards. Since the closing date was the next day, Mr. Bates indicated that he was going to hand-deliver a letter by his law clerk. (Complainant's Exhibit No. 7). Respondent Edwards informed Mr. Bates that the contract called for performance on January 29, 1982 and they did not desire an extension and further informed him that any letters should be mailed rather than delivered.

Mr. Bates then dispatched his law clerk, Toby Ward, who was then a third year student at the University of South

Carolina Law School, to hand-deliver the letter addressed to both Respondents and Mr. Harper.

Mr. Ward, the law clerk, called the Respondents' office in the late afternoon of January 28, 1982 to insure that there would be someone present at the office. A female answered the phone and indicated that he would have to hold for Mr. Edwards. A man then came on the phone and asked Mr. Ward if he was a lawyer to which he replied that he was not. The individual on the phone then used the word "shyster" in conversation and the telephone call was abruptly ended.

Mr. Ward then went to the Respondents' law office. As he approached the entrance the Respondent Campbell met

Mr. Ward at the door. At that time, Mr. Ward recognized the Respondent Campbell's face inasmuch as they had been in law school together but was not aware of his name. In the subsequent conversation and altercation, Mr. Ward mistakenly assumed that the Respondent Campbell was in fact the Respondent Edwards.

The Respondent Campbell indicated to Mr. Ward that the law office was not accepting delivery of letters and that nothing was to be taken into the office. Mr. Ward replied that he was merely trying to do his job whereupon he placed the letters on the floor. The Respondent Campbell picked up the letters and put them against the chest of Mr. Ward. The letters fell to the

floor and Ward picked them up and proceeded to leave. Although Mr. Ward testified that he was in fear of serious bodily harm, he immediate returned again to the Respondents' law office and deposited the letters in the mail chute located in the front door. The Respondent Campbell, who was in his office, ran outside and placed the letters under the windshield of Mr. Ward's car.

Mr. Ward returned to his employer's office and advised Mr. Bates of the altercation. Mr. Bates called John Harper and read him the contents of the letter over the phone and thereafter mailed a copy of the letter to all of the purchasers. Mr. Harper then called the Respondent Edwards and indicated that a Complaint was going to

be filed against Respondent Edwards by Mr. Ward for the assault.

On January 29, 1982, the day after the incident, Mr. Ward filed a grievance with the Board of Commissioners on Grievances and Discipline indicating that he had attempted to deliver letters and was assaulted by the Respondent Edwards. On February 5, 1982, Donald V. Richardson, the Chairman of the Board of Commissioners on Grievances and Discipline, acknowledge the grievance and wrote the Respondent Edwards asking him to respond to the charges. The Respondent Edwards received the grievance on February 8, 1982 and responded on the same date that he did not know Mr. Ward and further denied that he assaulted him in any way. (Complainant's Exhibit

No. 2). By separate letter, mistakenly dated February 8, 1981 but apparently written on February 8, 1982, the Respondent Edwards also requested that all records and proceedings involving this grievance be made public. (Complainant Exhibit No. 5). Although this request was addressed to the Chairman of the Board of Commissioners on Grievances, it was not received by the Board. For some unexplained reason, the Attorney General's Office received this request and a copy was forwarded to the Board of Commissioners around August 13, 1982. Although the request to make this matter public was denied by the Chairman of the Board of Commissioners on Grievances and Discipline, the Respondent Edwards was never notified of this denial.

On February 9, 1982 the Respondent Edwards appeared before Magistrate Samuel Peay in Columbia and obtained an arrest warrant for Mr. Ward for criminal libel and slander pursuant to Section 16-17-150, South Carolina Code of Laws, 1976. (Complainant's Exhibit No. 3). Respondent Edwards executed an affidavit indicating that Mr. Ward had written a letter to the South Carolina Board of Commissioners on Grievances and Discipline alleging that Respondent Edwards on January 28, 1982 assaulted and threatened Mr. Ward and further that Mr. Ward accused the Respondent of having violet propensities. On February 10, 1982, the Respondent Edwards filed, pro se, a verified libel and slander complaint against Mr. Ward in the Court of Common Pleas for the

County of Richland, seeking Twenty Million ($20,000,000.00) Dolars in actual and punitive damages. (Complainant's Exhibit No. 4). The Complaint was based on the letter sent by Mr. Ward to the Grievance Committee on January 29, 1982 which was attached as an exhibit to the Complaint. The Respondent Campbell notarized the verification executed by the Respondent Edwards of the Complaint.

Tobias Ward was in Myrtle Beach when he received a call from his roommate indicating that the sheriff had come to arrest him. Mr. Ward notified Mr. Bates and returned to Columbia the following day. He voluntarily appeared at the sheriff's office where he was arrested and booked and later released

on a personal recognizance bond. He was subsequently served with the civil summons and complaint filed by Respondent Edwards.

The Chairman of the Board of Commissioners on Grievances and Discipline was notified of the institution of the criminal action on February 12, 1982 by James Barber who was at that time a partner in the firm of Marchant, Bates, Todd and Barber. Within the next couple of days, Mr. Richardson advised the Respondent Edwards by telephone that the criminal and civil actions would violate Rule 20 on confidentiality. On February 17, 1982, the Executive Committee instructed the Attorney General to proceed with the grievance filed by Mr. Ward.

Dick Kale of the Attorney General's Office subpoenaed the Respondent Edwards to appear at his office as a part of the investigative procedure and there was a conversation between the two concerning the rule on confidentiality and Rule 26 which provides for an absolute immunity from complaints filed with the Board of Commissioners on Grievances and Discipline. It was Mr. Kale's impression that the Respondent Edwards was going to dismiss the actions following this conversation. Tobias Ward also appeared at this meeting for the purpose of determining whether or not he could identify the Respondent Edwards as the individual with whom he had the altercation.

James Barber represented Tobias

Ward in the criminal libel and slander action. A motion before the Magaistrate to quash the arrest warrant was orally denied and was thereafter appealed to the Circuit Court. A hearing was held on March 12, 1982 at which time the Respondent Edwards appeared and testified and was represented by the Respondent Campbell. On March 24, 1982, the Honorable John Grimball issued an Order reversing the Magistrate and squashing the warrant on the grounds that Mr. Ward was protected by the absolute privilege provided by Rule 26. (Complainant's Exhibit No. 8). A Demurrer was sustained to the Civil action by Order dated April 15, 1982. (Complainant's Exhibit No. 9).

Both of the Respondents are relatively young. The Respondent Edwards is

thirty - four(34) years old and has been a member of the South Carolina Bar since 1978. He attended North Carolina Central University where he obtained his undergraduate degree in 1970 and his law degree in 1974. He is married and has three (3) children and has practiced a general practice in Richland County since 1978. The Respondent Campbell is twenty-nine (29) years old and is single. He received his undergraduate degree in 1975 from South Carolina State and his law degree in 1981 from the University of South Carolina Law School. He was admitted to the South Carolina Bar in November of 1981 and has practiced since his admission with the Respondent Edwards. The Respondent Campbell and Tobias Ward are approximately the

same size and weight, each being approximately six (6') feet tall and one hundred seventy-five (175) pounds.

An investigator for the Attorney General's office was called in reply to attempt to impeach the credibility of the Respondent Campbell. The Respondents objected to the testimony of the investigator on the grounds that he had been present in the courtroom during a portion of the testimony. The Panel attempted to ascertain through the parties and Board members auditing the Panel hearing, the exact time at which the witness entered the room. Despite the contentions of the respondents, the Panel is convinced that the witness was not present during the testimony of Respondent Campbell. However, the Panel likewise recognized that all witnesses

were sequestered pursuant to the instructions of the Panel and that the investigator's presence in the hearing room during portions of the testimony was improper. The witness was allowed to testify under reservation of the Respondent's objections and the Panel concludes that inasmuch as the discrepancies in the Respondent Campbell's testimony as established by this witness are minor and due to his presence in the courtroom prior to the time of his testimony, the Panel has not considered any portion of this witness' testimony inasmuch as the same is unnecessary to a resolution of the issues presented in this case.

CONCLUSIONS OF LAW

Rule 20 of the Rule on Disciplinary Procedure, South Carolina Code of Laws,

1976, provides in part:

> "(A). All records and proceedings involving allegations of Misconduct by an attorney shall be confidential and shall not be disclosed unless:
>
> (1) The Respondent shall in writing request that they be public; ***"

Although Rule 20(a)(1) would seem to imply that the Respondent can make public the records involving an allegation of misconduct upon a written request, Rule 20 provides later in Subsection (D) the following:

> "Any proceeding before the Board may be made public upon written request of the Respondent."

It is apparent from the testimony of the Chairman of the Board of Commissioners on Grievances and Discipline that this Rule has been interepreted by the Board and the Supreme Court to ren-

der the decision of confidentiality discretionary. In fact, the Chairman testified that no request by any respondent to make a matter of allegations of misconduct public has ever been granted by the Board.

Rule 26(a) of the Rule on Disciplinary Procedure, South Carolina Code of Laws, 1976, provides as follows:

> "Complaints or Grievances submitted to the Board or Executive Committee or testimony or documents with respect thereto shall be absolutely privileged, and no lawsuit predicated theron may be instituted against any complainant or witness."

Although our Supreme Court has not had the occasion to interpret this Rule the absolute immunity is consistent with the general law in most jurisdic-

tions. See 50 Am. Jur. 2d. Libel and Slander, Section 235. It is likewise firmly established in this State that South Carolina has long applied the doctrine of absolute privilege to quasi-judicial and legislative proceedings. Corbin v. Washington Fire and Marine Insurance Company, 278 F.Supp. 393 (1968); Johnson v. Independent Life and Accident Insurance Company, 94 F.Supp. 959 (1951); Carver v. Morrow 213 S.C. 199, 48 S.E.2d 814 (1948); Rodgers v. Wise, 193 S.C. 5, 7 S.E. 2d 517 (1940); State v. Drake, 122 S.C. 350, 115 S.E. 297 (1922); Reid v. Delorme, 2 Brev. 76 (1806).

In addition to the rules on confidentiality and immunity, the Code of Professional Responsibility as adopted by our Supreme Court in Rule 32 of the Rules

of the South Carolina Supreme Court, 1976, prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice or adversely reflects on his fitness to practice law. DR1-102(A)(5 and 6). Furthermore, DR7-102(a)(1 and 2) prohibits a lawyer from instituting an action which would obviously serve merely to harass or maliciously injure another or which is unwarranted under existing law unless supported by a good faith argument for extension, modification or reversal of existing law.

RECOMMENDATIONS

I. AS TO THE RESPONDENT CAMPBELL

The only allegation of misconduct in the Complaint concerning the Respon-

dent Campbell concerns the alleged assault and battery upon Mr. Ward. The Panel has no reservations that the Respondent Campbell acted unprofessionally. The evidence indicates, however, that the Respondent Campbell also acted in complicity with the Respondent Edwards in both the institution and maintenance of the criminal and civil actions filed against Mr. Ward as a result of the grievance he filed.

The Respondent Campbell represented the Respondent Edwards at the Motion to Quash the criminal warrant. There is sufficient evidence to establish that the Respondent Campbell on behalf of the Respondent Edwards vigorously opposed the quashing of this warrant in spite of the absolute

immunity provided by Rule 26. Furthermore, the Respondent Campbell notarized the verification filed by Respondent Edwards of the civil complaint against Mr. Ward.

The actions of the Respondent Campbell individually would perhaps not constitute such serious infractions as to impose disciplinary action. However, when considering all of the actions together, the Panel must conclude that the Respondent Campbell has engaged in conduct which tends to pollute the administration of justice and which would bring the legal profession into disrepute. The Panel therefore recommends that the Respondent Campbell should receive a private reprimand.

II. AS TO THE RESPONDENT EDWARDS

The impropriety of the Respondent's Edwards is much more severe. The evidence clearly indicates that the Respondent Edwards violated both Rule 20 concerning confidentiality and Rule 26 providing for absolute immunity regarding grievance allegations. Inasmuch as the Respondent Edwards is an attorney and member of the Bar of this State, the Rule of constructive knowledge of Court Rules, which have the force and effect of statutory law, applies more persuasively to him than general members of the public. The Panel finds that the Respondent Edwards instituted both the criminal and civil actions against Mr. Ward when he knew or should have known of the existence of Rule 20 and

Rule 26. Even more disconcerting, there is uncontradicted evidence of the Respondent Edward's actual knowledge of these Rules within several days after filing the criminal and civil actions. Yet, it was only after an appeal and the delay of six (6) weeks before the criminal action was finally dismissed. Likewise, even though a Demurrer had been interposed to the civil action, the actual Order of Dismissal of the civil complaint was not had until April 15, 1982, over eight (8) weeks after the institution of the suit.

In mitigation of the violation of Rule 20, the Respondent Edwards did request in writing that the disciplinary procedure be made public. Furthermore, the Panel recognizes that the discre-

tionary nature of a request to publicize grievance complaint is gleaned only from a complete examination of the entirety of Rule 20 as well as perhaps some knowledge of the prior treatment of such requests by the Board of Commissioners on Grievances and Discipline and the Supreme Court. In fact, the initial portion of Rule 20 would indicate that a written request by the respondent would automatically make public records and proceedings involving allegations of misconduct. It is only in Subsection D that this right is qualified by the discretion placed with the Board.

In any event, Rule 20 (e) clearly indicates that violation of Rule 20 shall be deemed contempt of Court and punish-

able as such. While the Panel does not intimate that a violation of Rule 20 could never be grounds for discipline, it is felt that considering the mitigating circumstances and the nature of the violation in this particular case, that the Respondent Edwards should be disciplined by contempt procedures as determined to be appropriate by the Supreme Court for the violation of this Rule without the imposition of additional disciplinary sanctions by this Board.

In addition to the violation of Rule 26, this Panel finds that the Respondent Edwards initiated and knowingly maintained both the civil and criminal actions against Mr. Ward

when the claims were unwarranted under existing law and when it was obvious that such actions were serving merely to harass or maliciously injure another in specific violation of DR7-102(a)(1 and 2). It it clear that the Respondent Edwards failed to take reasonable steps necessary to immediately dismiss these actions even after his admitted actual knowledge of Rule 26. The Panel likewise finds persuasive that the Respondent Edwards' justification for the initiation of these lawsuits was inferentially, if not specifically, retaliatory in nature. The Panel has no other alternative but to conclude that such conduct on the part of the Respondent Edwards tends to pollute the administration of jus-

tice and bring the legal profession into disrepute and may further indicate conduct demonstrative of his unfitness to practice law.

The Panel therefore concludes and recommends that the Respondent Campbell should be privately reprimanded. The Panel further finds that considering the degree of misconduct concerning the Respondent Edwards, that he should receive a public reprimand. The Panel would further recommend that the Respondent Edwards be required to show cause to the Supreme Court why he should not be disciplined by contempt sanctions before the Supreme Court for his violation of Rule 20.

Respectfully submitted,

_____

Eugene C. Covington Jr.,
Chairman

_____

Dan M. Byrd, Jr.

_____

A. Milling Blalock

RECEIVED:

December 23, 1982

BD. OF COMM. ON GRIEVANCES
& DISCIPLINE

APPENDIX D

THE BOARD OF COMMISIONERS

ON

GRIEVANCES AND DISCIPLINE

IN THE MATTER OF:

WILLIAM H. EDWARDS, SR.

AND

LARKIN V. CAMPBELL,

RESPONDENTS.

CERTIFICATION OF THE RECORD BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE TO THE SOUTH CAROLINA SUPREME COURT

Pursuant to Section 14(A)(3) of the Rule on Disciplinary Procedure, the following is a Certification of the proceedings before the Commission in the captioned matter.

On or about July 22, 1982, the Respondents were served with a Notice and Complaint, the original of which is enclosed herein. Respondents filed an Answer on or about August 10, 1982, the original of which is enclosed.

The matter came on for a panel hearing on November 16, 1982, in the Supreme Court Building before Eugene C. Covington, Jr., serving as Chairman, Dan M. Byrd, Jr. and A. Milling Blalock. The Complainant was represented by Assistant Attorney General Clifford O. Koon, Jr. and the Respondents were represented by each other.

The Panel Report, the original of which is enclosed, was filed on or about December 23, 1982, and served upon the

Respondents on the same day. The Panel Report recommended that Respondent Campbell be privately reprimanded and Respondent Edwards be publicly reprimanded. Respondents were advised of their right to file exceptions and supporting briefs within the twenty days required by Section 14 of the revised Rule.

Respondent filed exceptions to the Panel Report on or about January 24, 1983. The Complainant did not file exceptions to the Panel Report.

The matter came on for reveiw by the Executive Committee on January 28, 1983. The Executive Committee, by a vote of 5 to 0, voted to adopt the panel's findings of fact and conclusions

of law. Its independent recommendation as to sanction was a private reprimand for Respondent Campbell and a public reprimand for Respondent Edwards.

The original of the transcript of the panel hearing and exhibits thereto are enclosed.

The costs incurred by the Board in Connection with this matter amount to $507.70 (travel expenses and per diem for panel members).

A copy of this Certification is being sent to the Respondents and to the Attorney General.

Donald V. Richardson
Chairman

Columbia, South Carolina

February 1, 1983

ATTESTED TO:

Barbara W. Hinson
Administrative Assistant
to the Board of Commissioners on
Grievances and Discipline

APPENDIX E

MATTER OF EDWARDS
Cite as 302S.E.2d339 (S.C. 1983)

In the Matter of William Henry

EDWARDS, Respondent,

No. 21903

Supreme Court of South Carolina.

April 19, 1983

In a disciplinary proceeding, the Supreme Court held that instituting civil and criminal actions against person filing grievance with Board of Commissioners on Grievances and Discipline, and maintaining such actions after being advised by Board chairman that such actions are violative of rule on disciplinary procedure concerning confidentiality warrants public reprimand.

Public reprimand ordered.

Attorney and Client --58

Instituting civil and criminal actions against person filing grievance with Board of Commissioners on Grievances and Discipline, and maintaining such actions after being advised by Board chairman that such actions are violative of rule on disciplinary procedure concerning confidentiality warrants public reprimand. Sup.Ct.Rules, Rule 32, Code of Prof.Resp., DR7-102(A)(1,2); Rules on Disciplinary Procedure, §§ 20,26

Atty. Gen. T. Travis Medlock and Asst. Atty. Gen. Clifford O. Koon, Jr., Columbia, for complainant.

Larkin V. Campbell, Columbia, for respondent.

PER CURIAM:

The Hearing Panel and Executive Committee of the Board of Commissioners on Grievances and Discipline recommend respondent William Henry Edwards be publicly reprimanded for professional misconduct. We agree.

Complainant, a law clerk in a South Carolina firm, was dispatched by his employer to hand deliver a letter to respondent. Complainant was assaulted outside the law firm by one, whom complainant mistakenly assumed was respondent.

The next day, complainant filed a grievance against respondent indicating he had been assaulted by him. On February 8, 1982, respondent requested the grievance

proceedings and records be made public. Inexplicably, the request was received by the Attorney General's office and was not forwarded to the Board for several months.

On February 9, 1982, the day following his request for the proceedings to be made public, without ascertaining whether his request had been granted, respondent instituted a criminal action against the complainant for libel and slander. The next day, respondent filed a civil libel and slander action. Both actions were based on complainant's letter to the Board.

Immediately upon learning of the lawsuits, the Board Chairman advised respondent the civil and criminal actions were

violative of Rule 20 of the Rules on Disciplinary Procedure concerning confidentiality. Nevertheless, respondent proceeded with both actions. Incredibly, respondent maintained before this Court that he did not know he could take a voluntary nonsuit in a civil case.

We conclude respondent violated Rule 20 of the Rules on Disciplinary Procedure by instituting and maintaining the civil and criminal actions against complainant based on complainant's filing of the grievance. Further, respondent violated Rule 26 which clothes complainants with absolute immunity in grievance matters, and DR7-102(A)(1) and (2) which prohibits an attorney from initiating unwarranted

actions merely to harass or maliciously injure another. We agree with the Beard the appropriate sanction is public reprimand. Accordingly, respondent William Henry Edwards stands publicly reprimanded.

Appendix F

1658 Horseshoe Drive, Apt. A
Columbia, South Carolina 29204

January 29, 1982

Board of Commissioners on Grievances
& Discipline
Post Office Box 11330
Columbia, South Carolina 29211

Gentlemen:

At 4:30 P.M., on January 28, 1982, at 1531 Manning Street, Columbia, South Carolina, I attempted to deliver 3 letters to the addressee--a local attorney, William H. Edwards. While doing so, I was physically assaulted by Mr. Edwards and threatened with bodily harm. This

conduct was entirely unprovoked by me and completely without justification. Although the assault resulted in no physical injury to me, it was embarrassing and startling and I feel such action by any member of the South Carolina Bar should not go unnoticed.

If your normal procedure of handling complaints such as this is to send copies of written complaints to the attorney in question in order for him to respond, I would appreciate your notifying me first so that I can be on my guard since Mr. Edwards exhibited quite violent propensities to my mind.

Sincerely,

Tobias G. Ward, Jr.

tas

Appendix G

EDWARDS & CAMPBELL, P.A.

Attorneys & Counselors at Law

William H. Edwards, Jr.

L. Vanderbilt Campbell

February 8, 1981

Mr. Donald V. Richardson, Chairman
The Board of Commissioners on Grievance
& Discipline
The Supreme Court of South Carolina
P. O. Box 11330
Columbia, South Carolina 29211

Dear Mr. Richardson:

In response to your letter of February 5, 1982, I request that all records and

proceedings involving allegations of Misconduct by myself be made public. I refer you to page 282-C Rule 20(A)(1).

Sincerely,

William H. Edwards, Sr.
Attorney at Law

Appendix H

STATE OF SOUTH CAROLINA Before The Board of Commissioners On

County of Richland Grievance And Discipline

In the Matter of:

WILLIAM H. EDWARDS, SR.

AND

L. VANDERBILT CAMPBELL

RESPONDENTS.

NOTICE

TO THE RESPONDENT ABOVE NAMED:

You will please take notice that a complaint has been filed against you with the Board of Commissioners on Grievances and Discipline pursuant to the Rule on Disciplinary Procedure of the South Carolina Supreme Court. A copy of the complaint is attached to this notice.

You are required within twenty (20) days of the mailing of this notice to file with this Board your answer in quadruplicate and to serve a copy of your answer upon the complainant or his counsel of record if the complainant is someone other than the Secretary of the Board. The answer should be signed by you or by your attorney or both. Verification is not necessary but you may verify if you wish. The service of the answer upon the Board can be accomplished by sending four copies of the answer within twenty days to the Secretary of the Board of Commissioners on Grievances and Discipline.

Shirley B. Monteith
Administrative Assistant

Columbia, South Carolina
July 20, 1982

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

L. Vanderbilt Campbell
and William H. Edwards,

Respondents.

C O M P L A I N T

The following allegations are made.

I.

The Respondents are attorneys licensed to practice law in the State of South Carolina and reside and/or maintain offices for that purpose in the County of Richland.

II.

The respondents practice together under the name of Edwards and Campbell, P.A.

III.

Upon information and belief, Respondent Campbell has committed the following acts of misconduct:

(a) On January 28, 1982, Tobia Ward, a law clerk with the firm of Marchant, Bates, Todd and Barber, visited Respondents' offices in an attempt to deliver three letters upon instructions from his employers.

(b) Upon his arrival at Respondents' offices Mr. Ward identified himself and inquired of Respondent Edwards.

(c) Respondent Campbell led or allowed Mr. Ward to believe that he was William Edwards and refused to accept delivery of the letters.

(d) Upon Mr. Ward's attempts to effectuate delivery, Respondent Campbell committed assault and battery upon Mr. Ward, who therupon took the letters and left.

(e) As a result of sub-paragraphs (a) through (d) herein, Respondent Campbell has engaged in conduct which adversely reflects upon his fitness to practice law and has engaged in conduct which tends to pollute the administration of justice or to bring the Courts or the legal profession into

disrepute, all in violation of the Code of Professional Responsibility and the Rule on Disciplinary Procedure.

IV.

Upon information and belief Respondent Edwards has committed the following act or acts of misconduct:

(a) Subsequent to the events described in paragraph III herein, Tobias Ward filed a Complaint with this Board alleging that Respondent Edwards had assaulted him and threatened him with bodily harm. At the time of the Complaint, Mr. Ward believed that Respondent Edwards had been his assailant. Such Complaint was filed by letter dated January 29, 1982.

(b) On February 9, 1982, Respondent Edwards caused a warrant to be issued for Mr. Ward's arrest upon a charge of criminal libel and slander based solely upon the Complaint made with this Board. Such warrant resulted in the subsequent arrest and incarceration of Mr. Ward until his bail could be arranged.

(c) On February 10, 1982, Respondent Edwards initiated a defamation action against Mr. Ward in the Court of Common Pleas, Fifth Judicial Circuit, in and for the County of Richland. Such action was based solely upon Mr. Ward's Complaint to this Board.

(d) As a result of sub-paragraphs (a) through (c) herein, Respondent Edwards has filed a suit and taken a position when he knew or when it was obvious that such action would serve merely to harass or maliciously injure another; has knowingly advanced a claim that is unwarranted under existing law; has engaged in conduct which tends to pollute the administration of justice or to bring the Courts or legal profession into disrepute, and conduct demonstrating his unfitness to practice law, all in violation of the Code of Professional Responsibility and the Rule on Disciplinary Procedure.

WHEREFORE, it is prayed that the Board of Commissioners on Grievances and Discipline take such action as it deems appropriate.

Respectfully submitted,

DANIEL R. McLEOD
Attorney General

CLIFFORD O. KOON, JR.
Assistant Attorney General

By: _____
Attorneys for Complainant

Columbia, South Carolina,

July ____, 1982.

Appendix I

STATE OF SOUTH CAROLINA	)	IN THE SUPREME
	)	
COUNTY OF RICHLAND	)	COURT
	)	
IN THE MATTER OF:	)	
	)	
	)	
William H. Edwards, Sr. and Larkin V. Campbell,	)	
	)	
Respondents.	)	
	)	

E X C E P T I O N S

11. The Commissioners erred when they found in their Conclusion of Law that Rule 26(A) provides absolute privileges to the letter that Tobias Ward wrote to the Grievances Board and that these absolute privileges are consistent with the general law in most jurisdictions, the

error being that 50 Am Jur 2c Libel and Slander Section 235 also states that some Courts extend only a qualified privilege to a lay complaint relating to an attorney.

12. The Commissioners erred when they found in their Conclusion of Law that Rule 20(A)(1) is discretionary, the error being that Rule 20(A)(1) clearly gives the Respondent the right to make the records and proceedings public by requesting in writing that they be made public.

15. The Commissioners erred when they found in their Recommendations that Respondent Edwards should be disciplined by contempt procedures for

violation of Rule 20(E), the error being that Respondent Edwards did re-request in writing that the disciplinary procedure be made public in accordance with Rule 20(A)(1) and the fact that the Board admits that Rule 20(A)(1) would indicate that a written request by the Respondent would automatically make public records and proceedings involving allegations of misconduct.

16. The Commissioners erred when they found in their Recommendations that Respondent Edwards initiated and knowingly maintained both the civil and criminal actions against Mr. Ward when the claims were unwarranted under

existing law and when it was obvious that such actions were serving merely to harass or maliciously injure another in specific violation of DR7-102(A)(1 and 2), the error being that Respondent Edwards testified that the allegations of Tobia Ward were known to him prior to the filing of the Complaint and that Section 16-7-150 of the South Carolina Code gave Respondent Edwards the right to bring the criminal charges even if Mr. Tobias Ward had not filed his complaint with the Grievance Board.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of WILLIAM HENRY EDWARDS, Petitioner.	NOTARIZED STATEMENT

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on July 18, 1983, he mailed forty (40) copies of the petition for certiorari to the Honorable Clerk of the Supreme Court of the United States, by

depositing aforesaid copies in a mailbox located in the main United States post office in Columbia, South Carolina, with first-class postage prepaid, and properly addressed to the Clerk of this Court within the time allowed for filing.

4. That this statement is made and filed in accordance with Rule 28.2 of the Rules of the Supreme Court of the United States.

John R. Harper, II

Post Office Box 843
Columbia, S. C. 29202
(803) 799-2798

July 18th, 1983

Columbia, South Carolina

Sworn To before Me This

18th Day of July, 1983

Notary Public for South Carolina

My Commission Expires:

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of WILLIAM HENRY EDWARDS, Petitioner.	NOTARIZED STATEMENT

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this Honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on July 18, 1983, he mailed three (3) copies of the petition for certiorari to the Honorable T. Travis Medlock, lead counsel for the complainant

below, by depositing aforesaid copies in a mailbox located in the main United States post office in Columbia, South Carolina, with first-class postage pre-paid and properly addressed to the Honorable T. Travis Medlock within the time allowed for filing.

4. That this statement is made and filed in accordance with Rules 28.3 and 28.5 of the Rules of the Supreme Court of the United States.

5. That all parties required to be served in this case have been served, to wit:

The Honorable T. Travis Medlock
Attorney General of South Carolina
Post Office Box 11548
Columbia, South Carolina 29211

John R. Harper, II

Post Office Box 843
Columbia, S. C. 29202
(803) 799-2798

July 18th, 1983

Columbia, South Carolina

Sworn To Before Me This

18th Day of July, 1983.

Notary Public for South Carolina

My Commission Expires: My Commission Expires March 17, 1990

Office-Supreme Court, U.S.
FILED
OCT 11 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-119

In The Matter of:
WILLIAM HENRY EDWARDS,
Petitioner.

REPLY AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. TRAVIS MEDLOCK
Attorney General

JOSEPH A. WILSON, III
Chief Deputy Attorney General

CLIFFORD O. KOON, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-119

In The Matter of:
WILLIAM HENRY EDWARDS,
Petitioner.

REPLY AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. TRAVIS MEDLOCK
Attorney General

JOSEPH A. WILSON, III
Chief Deputy Attorney General

CLIFFORD O. KOON, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

QUESTIONS PRESENTED

I.

Does this Court have jurisdiction to consider a Petition For Writ of Certiorari where the Petitioner has failed to present any questions of Federal Law or Constitutionality before the highest state court?

II.

Should this Court consider a Petition for Writ of Certiorari where the requirements of Supreme Court Rules 17 and 21 have not been met?

III.

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate the existence of a substantial federal question?

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Street v. New York, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d 572 (1969) ---------- 3

Walters v. City of St. Louis, Missouri, 74 S.Ct. 505, 347 U.S. 231, 98 L.Ed. 660 (1954) ---------- 3

Webb v. Webb, 101 S.Ct. 1889, 451 U.S. 493, 68 L.Ed.2d 392 (1981) ---------- 3

OTHER AUTHORITIES:

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The South Carolina Supreme Court Rule on Disciplinary Procedure, Sections 20 and 26(A) ---------- 3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-119

In The Matter Of:
WILLIAM HENRY EDWARDS,
Petitioner.

REPLY AND BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion below appears at 302 S.E.2d 339, ___ S.C. ___ (1983), captioned as In The Matter of William Henry Edwards, Respondent. Petitioner has appended a copy of said opinion as Appendix "E" to his Petition.

JURISDICTION

This Honorable Court is without jurisdiction to consider this Petition.

Petitioner has attempted to invoke jurisdiction pursuant to 28 U.S.C. 1257 (3). However, a cursory review of the Petition reveals that Petitioner's alleged federal questions were never raised in the Court below. On page nineteen (19) Petitioner admits that his due process arguments (Questions 3 and 4) were not presented below. Respondent's Answer, which is set out fully herein as Appendix B, raises no federal questions. Furthermore, the Exceptions to the South Carolina Supreme Court which Petitioner has appended to his Petition at Appendix I are bereft of any reference to questions of Federal Law or constitutionality as required by the above-referenced section. Having failed to raise these issues before the Hearing Panel and the South Carolina Supreme Court, Petitioner's attempt to

invoke the jurisdiction of this Court is without foundation. Slagle v. State of Ohio, 81 S.Ct. 1076, 366 U.S. 259, 6 L.Ed.2d 277 (1961); Walters v. City of St. Louis, Missouri, 74 S.Ct. 505, 347 U.S. 231, 98 L.Ed. 660 (1954); Shelley v. Kraemer, 68 S.Ct. 836, 334 U.S. 1, 92 L.Ed. 1161 (1948); Street v. New York, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d 572 (1969); State v. Rinehart, 283 N.W.2d 319, Certiorari denied 100 S.Ct. 1049, 444 U.S. 1088, 62 L.Ed.2d 775 (1979); Webb v. Webb, 101 S.Ct. 1889, 451 U.S. 493, 68 L.Ed.2d 392 (1981).

PROVISIONS OF STATE LAW INVOLVED

The South Carolina Supreme Court Rule on Disciplinary Procedure, Sections 20 and 26(A). (See Petitioner's Appendix "A" and Appendix "A" herein.)

QUESTIONS PRESENTED

I.

Does this Court have jurisdiction to consider a Petition For Writ of Certiorari where the Petitioner has failed to present any questions of Federal Law or Constitutionality before the highest state court?

II.

Should this Court consider a Petition for Writ of Certiorari where the requirements of Supreme Court Rules 17 and 21 have not been met?

III.

Should this Court issue a Writ of Certiorari where Petitioner has failed to demonstrate the existence of a substantial federal question?

STATEMENT OF THE CASE

Petitioner is an attorney practicing law in Columbia, South Carolina. During 1981 Petitioner and his law partner were negotiating with another attorney regarding the merger of their firms. Because such a merger would result in the need for more office space the three had entered into a contract with a Mr. John Gibson for the purchase of an office building. Certain problems arose concerning the contracts which prompted Gibson's attorney to have certain letters hand delivered to the prospective purchasers. On or about January 28, 1982, a law clerk, Tobias Ward, was dispatched to Petitioner's office where he was assaulted by one whom he mistakenly believed to be Petitioner and was told that the letters would not be accepted. The violent

nature of the altercation caused Mr. Ward to file a grievance against Petitioner with the South Carolina Board of Commissioners on Grievances and Discipline, an administrative arm of the South Carolina Supreme Court. At this point Mr. Ward still believed that he had been assaulted by Petitioner Edwards.

On or about February 9, 1982, Petitioner caused a warrant for Mr. Ward's arrest to be issued alleging criminal libel and slander. Mr. Ward was subsequently arrested, booked, and held until his bail could be arranged. On or about February 10, 1982, Petitioner filed a defamation suit against Mr. Ward. Both of these actions were based solely on Mr. Ward's letter to the Board.

On or about February 12, 1982, the Chairman of the Board of Commissioners on Grievances and Discipline received word of the criminal action. Shortly thereafter, the Chairman warned Petitioner that any action against Mr. Ward would violate the Rule on Disciplinary Procedure. On or about February 23, 1982, Petitioner met with Senior Assistant Attorney General Richard Kale, who was assigned to coordinate the grievance investigation. At that meeting it was determined that the grievance was a case of mistaken identity. Mr. Kale also learned of the civil and criminal actions against Mr. Ward. Petitioner was again warned of the possible violations of Section 20 and 26 of the Rule on Disciplinary Procedure.

In spite of the aforementioned warnings Petitioner continued to press

both actions against Mr. Ward. After the magistrate denied a motion to quash the warrant, an appeal was taken before a circuit judge. Petitioner testified at the March 12th appeal hearing and his law partner argued on his behalf against the appeal. On March 24, 1982, the circuit judge issued his order reversing the magistrate and quashing the arrest warrant upon the grounds of the immunity afforded by Section 26 of the Rule on Disciplinary Procedure. A Demurrer to the civil action was sustained upon the same grounds on April 15, 1982, resulting in an involuntary dismissal of the complaint.

After investigation, no assault charges were brought against Petitioner, but the Board's Executive Committee directed that a formal complaint be brought against him because of his

actions against Mr. Ward. A Hearing Panel consisting of three Board members convened a formal hearing on November 16, 1982. Petitioner appeared and was represented by counsel. The Panel issued its report and recommendations on or about December 23, 1982. Said report is appended to Petitioner's Petition as Appendix "C." Petitioner filed exceptions to the Panel Report with supporting brief on or about January 24, 1983. The matter was reviewed by the Executive Committee on January 28, 1983, which voted unanimously to adopt the Hearing Panel's findings of fact and conclusions of law. On February 1, 1983, the Executive Committee made its independent recommendation and certified the record to the South Carolina Supreme Court. The certification is appended to the Petition as Appendix "D."

On March 21, 1983, the Petitioner appeared with counsel before the South Carolina Supreme Court. In neither the exceptions nor the arguments before the Court were any issues raised as to questions of Federal Law or Constitutionality. On April 19, 1983, the Court issued its opinion publicly reprimanding Respondent.

ARGUMENT

I

Lack of Jurisdiction

As indicated by the cases cited above, this Court lacks jurisdiction to consider this matter. The jurisdiction conferred upon this Court by 28 U.S.C. 1257(3) is limited by its express language to those cases where matters of Federal Law or the United States Constitution are drawn into question.

This language has been construed by the cases cited above and numerous others to mean that no review by this Court will be granted unless these federal questions were presented to the Court whose judgment is being challenged. Petitioner has failed to meet this requirement and his Petition should be denied on this basis alone.

II.

Failure to Comply With Supreme Court Rules 17 and 21(h).

Petitioner has failed to comply with Rules 17 and 21(h) because he has failed to "specify the stage in the proceedings, both in the court of first instance and in the appellate court , at which the federal questions sought to be reviewed were raised....," etc. The requirements of Rule 17 are not met

because the lower court decided no federal questions. The obvious reason for these failures is that such federal questions were never raised before the courts below. Petitioner's Answer, which is attached hereto and incorporated by reference herein as Appendix "B," contains no defenses which could remotely be translated into federal questions. As mentioned above, the exceptions which relate to Petitioner (the first ten exceptions are irrelevent to this appeal) presented no federal questions to the South Carolina Supreme Court. Petitioner has appended these exceptions to his Petition as Appendix "I." Even if the federal questions had been raised before the Hearing Panel, Petitioner's failure to preserve them before the South Carolina Supreme Court would have rendered that

Court powerless to decide them. Being unable to comply with Rules 17 and 21(h), Petitioner should not be heard to complain to this Court as to any action taken by the court below. Hulbert v. Chicago, 26 S.Ct. 617, 202 U.S. 275, 50 L.Ed. 1026 (1906).

III.

Lack of Substantial Federal Question.

As the Statement of the Case and the appended documents indicate, the issues presented in this appeal involve an attorney, mistakenly accused of professional misconduct, who took rash and ill-advised steps in retribution against his accuser. In the beginning Petitioner's actions could have been excused as having been hastily conceived in the heat of anger. However, these matters rose to the level of

professional misconduct when he refused to relent after having been warned to abandon his retributive actions by two people who were knowledgeable and authoritative in the field of professional ethics.

The protection of complainants to the Board of Commissioners on Grievances and Discipline is a matter of great concern to the Supreme Court of South Carolina. However, it is clearly a local concern and not a federal question. The ability of the state court to effectively carry out its duties in regard to disciplining attorneys rests largely on the confidence of those with knowledge of wrongdoing that they may come forward without fear of retribution. This is admittedly a very serious matter, certainly serious enough to have prompted the adoption of Section 26(A)

of the Rule on Disciplinary Procedure. The seriousness of the matter is not the controlling factor, however. Rather, in order to grant review this Court must find a substantial federal question as defined within the plain language of 28 U.S.C. 1257. That is, the case must involve a right or immunity created by the Constitution or Laws of the United States. Pan Am. Petroleum Corp. v. Superior Court of Delaware In and For New Castle County, 81 S.Ct. 1303, 366 U.S. 656, 6 L.Ed.2d 584 (1961). Although Petitioner has tried to bootstrap himself into jurisdiction, the plain truth is that the action below involved only whether Petitioner's retributive actions against Complainant Ward constituted misconduct under the Code of Professional Responsibility and the South Carolina Rule on Disciplinary

Procedure. This attempt to invoke the jurisdiction of this Court by attaching constitutional labels to matters of only local concern must be denied as being without a substantial federal question. Seaboard Air Line Ry. Co. v. Watson, 53 S.Ct. 32, 287 U.S. 86, 77 L.Ed. 180 (1932).

CONCLUSION

For the above-stated reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

JOSEPH A. WILSON, III
Chief Deputy Attorney General

CLIFFORD O. KOON, JR.
Assistant Attorney General

BY: _____
ATTORNEYS FOR RESPONDENT.

Appendix "A"

RULE ON DISCIPLINARY PROCEDURE

26. IMMUNITY AND PRIVILEGE

A. Complaints or Grievances submitted to the Board or Executive Committee or testimony or documents with respct thereto shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness.

Appendix "B"

STATE OF SOUTH CAROLINA)	BEFORE THE BOARD
)	OF COMMISSIONERS
COUNTY OF RICHLAND)	ON GRIEVANCES AND DISCIPLINE
IN THE MATTER OF:)	
)	
WILLIAM H. EDWARDS, SR.)	
)	ANSWER
RESPONDENT.)	
)	

Respondents, answering the allegations of the Complaint herein, would respectfully show unto this Board as follows:

1. Each and every allegation contained in the Complaint not specifically admitted, qualified or explained is hereby denied, and strict proof is demanded thereof.

2. Respondents admit the allegation contained in paragraph one (1) of the Complaint.

3. Respondents admit the allegation contained in paragraph two (2) of the Complaint.

4. Respondents admit on information and belief the allegation contained in paragraph 3(a) of the Complaint.

5. Respondents admit the allegation contained in paragraph 3(b) of the Complaint.

6. Respondents deny so much of the allegation contained in paragraph 3(c) which states, "Respondent _____ led or allowed Mr. Ward to believe that he was William Edwards...", and goes further to explain that there was no attempt whatsoever to mislead Mr. Ward in believing that Respondent _____ was William Edwards and that if such a belief was formed, it was done independently of any acts of the

Respondent _____.

7. Respondents admit the remaining allegation of paragraph 3(c) of the Complaint.

8. Respondents deny the allegation contained in paragraph 3(d) of the Complaint.

10. Respondents admit so much of the allegation contained in paragraph 4(a) of the Complaint, which states, "Subsequent to the events...Respondent Edwards had assaulted him and threatened him with bodily harm...".

11. Respondents deny so much of the allegation contained in paragraph 4(a) of the Complaint, which states, "At the time of the Complaint....Edwards had been his assailant...", and go further to explain that Mr. Ward did not have any basis to form such a belief that the Respondents are aware of.

12. Respondents admit the remaining allegation contained in paragraph 4(a) of the Complaint.

13. Respondents admit the allegations contained in paragraphs 4(b) and 4(c) of the Complaint and go further to explain that on February 5, 1982, Respondent Edwards mailed a letter to the Chairman of the Board requesting that the matter before the Board be made public, as was his right.

14. Respondents deny the portion of the allegations contained in paragraphs 4(b) and 4(c), which states, "Such action was based solely upon Mr. Ward's Complaint to this Board...", and go further to explain that Respondent Edwards' actions were based in part on information received from Attorney John R. Harper, II concerning Mr. Ward's assertion that Respondent Edwards had

assaulted him.

15. Respondents deny the allegations contained in paragraph 4(d) of the Complaint.

WHEREFORE, having fully answered the Complaint herein, Respondents pray that the Complaint be dismissed and that they be granted such other and further relief as this Board deems just and proper.

Respectfully submitted,

William H. Edwards

No. 83-119

Office-Supreme Court, U.S.
FILED
OCT 21 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of

WILLIAM HENRY EDWARDS,

Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF

THE STATE OF SOUTH CAROLINA

PETITIONER'S REPLY BRIEF

JOHN R. HARPER, II
Attorney for Petitioner

SANDI PERRY
Legal Researcher

Post Office Box 843
Columbia, South Carolina 29202
(803) 799-2798

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No. 83-119

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of

William Henry Edwards,

Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF

THE STATE OF SOUTH CAROLINA

PETITIONER'S REPLY BRIEF

Respondent has contended that this Court is without jurisdiction to grant the petition.

Petitioner's case is fraught with flagrant constitutional violations and fundamental errors. In addition, Petitioner raises highly significant questions. Petitioner maintains that these considerations are sufficient to confer jurisdiction. Respondent's contentions are frivolous.

QUESTIONS ONE AND TWO

The rule on confidentiality, as a prior restraint, comes to this Court "presumptively unconstitutional." Pittsburgh Press Co. v. Human Rel. Comm'n., 413 U.S. 376, 396 (1973)(Burger, C. J., dissenting). The rule, as construed by the South Carolina Supreme Court, allows for the exercise of arbitrary and capricious discretion in the consideration of a request for waiver. The rule's thrust is widespread suppression of speech, although it provides for a subsequent sanction. The rule dictates closed proceedings and secrecy. The interests sought to be protected are minimal: there is no jury to bias. The rule is sweeping, overbroad, and - Petitioner submits - patently and flagrantly unconstitutional.

Petitioner submits the rule's nature permits the Court to review these questions.

In the area of the First Amendment, the rules of standing have been relaxed. A defendant whose own speech is unprotected may challenge the constitutionality of a statute which purports to prohibit protected speech. Young v. American Mini Theatres, Inc., 427 U.S. 50, 60 (1976). This

exception has been justified because "the very existence of some statutes may cause persons before the Court to refrain from engaging in constitutionally protected speech..." Id., at 61.

Another First Amendment exception to traditional rules of standing was enunciated in Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1965). There, the relaxation of the finality requirement of 28 U.S.C.A. 1257 was justified because it "would be intolerable to leave unanswered, ... an important question of freedom of the press...; (it) would "leave the press... operating in the shadow of ... a statute the constitutionality of which is in serious doubt...". Id., at 487.

The rule on confidentiality is a permanent state court rule. The deprivation of rights it induces are continuing. (The rule in fact still operates on Petitioner: he is permanently restrained from disclosing any information pertaining to his proceeding.)

For the above reasons, Petitioner submits it would be intolerable not to relax standing

requirements to permit review of this rule.

In Webb v. Webb, 451 U.S. 493 (1981), the Court summarized the policy considerations underlying the requirement that federal questions must first be raised in the state courts. Of paramount importance was the principle of comity enunciated in Younger v. Harris, 401 U.S. 37, 44 (1971).

In Younger, however, the Court said that if a statute was "flagrantly and patently" unconstitutional, the doctrine of comity would not bar Federal intervention. Id., at 54-55.

Petitioner submits that the nature of the rule on confidentiality waives this interest in comity.

Additionally, Petitioner submits granting review of the rule on confidentiality to invalidate it as an unconstitutional prior restraint, dictates the granting of review of the speech and closed proceedings questions. Due to the wording of the rule, the three separate questions are inextricably intertwined.

Petitioner proffers In re Oliver, 333

U.S. 257 (1948) as precedent that the right to a public hearing is unwaiverable. In that case, the issue concerning closed proceedings had not been properly raised below, but was decided nonetheless.

Petitioner proffers Terminiello v. City of Chicago, 337 U.S. 1 (1949), as precedent for bestowing jurisdiction upon the Court to hear question one.

Petitioner does not admit that he did not raise his Federal constitutional questions below. On the contrary, Petitioner was precluded from raising them. Petitioner maintains though that the questions were raised implicitly.

Until the hearing, there were no Federal questions to raise. Petitioner had requested the opening of the proceedings in accordance with Rule 20 (A)(1) of the rule on confidentiality. At the hearing, the Chairman of the Board testified this rule authorized a discretionary request. Petitioner disputed this insisting Chairman's interpretation was

erroneous as it would deprive him of his right to a public proceeding. The panel found against Petitioner. Petitioner excepted to this finding before the Executive Committee. The Committee concurred in the finding below.

Petitioner kept insisting he had the right under the court rule to public proceedings and that the construction was erroneous, because he felt such a right was a basic due process guarantee under the Federal Constitution.

Implicit in Petitioner's insistence on the erroneousness of the construction was the argument that such a construction could not be upheld as it would violate federal constitutional guarantees. The legislature has no say in the creation or implementation of Supreme Court Rules in South Carolina and the construction of these rules would be readily known to the Court and its staff.

Petitioner notes the aforesaid stages of his proceeding were held in a tribunal mani-

festly incompetent. (See Petitioner's question three.) Additionally, the fact that the State Supreme Court has original jurisdiction of disciplinary proceedings renders any failure to raise a constitutional claim below meaningless.

Subsequently, the case was called for oral argument before the State Supreme Court. Such review is discretionary with the Court. (See Appendix A .)

Attorney Campbell, called with Petitioner, spoke for approximately five minutes. The Court then allowed Petitioner to speak. After approximately two to three minutes, Petitioner was informed his time was up. (A transcribed record is available of this proceeding.)

Petitioner had planned on discussing his written exceptions and then on raising a host of Federal constitutional arguments as to the effect of the Court's sustaining the rulings below: that he would be unconstitutionally denied the rights of due process and equal

protection under the Fourteenth Amendment to the United States Constitution.

Such arguments would have been permitted as the court has original jurisdiction of the matter.

By truncating Petitioner's presentation, the State Supreme Court arbitrarily deprived Petitioner of the opportunity to present his constitutional claims. This deprivation is not uniformly applied to all persons. Many litigants enjoy the benefit of plenary oral argument.

Petitioner submits that under Hathorn v. Lovorn, _____ U.S. _____, 102 S. Ct. 2421 (1982), the State Supreme Court's arbitrary action renders his failure to expressly present his claims inadequate as a state procedural ground barring review.

Petitioner was precluded from presenting his issues to the State Supreme Court in a petition for rehearing. Such petitions must be presented within ten days of the filing

of the Supreme Court's opinion. (See Appendix A.) Petitioner did not receive his opinion until after the ten days had expired. The opinion was initially sent to the wrong address, in spite of the fact Petitioner's correct address is on file.

The opinion was sent return receipt requested. Respondent has the dated receipt in his files.

Petitioner submits as another plain error conferring jurisdiction upon the Court, the ex post facto construction of the rule on confidentiality and its application to him. Bouie v. City of Columbia, 378 U.S. 347 (1964) holds that such an unforeseen judicial construction applied retroactively violates due process of law.

QUESTIONS THREE AND FOUR

Under the Supreme Court Rules, the Court may notice a plain error. The failure to raise such errors below does not constitute a bar to the Court's jurisdiction. Plain errors are errors that "seriouly affect the fairness,

integrity, or public reputation of judicial proceedings." Silber v. United States, 370 U.S. 717, 718 (1962).

Petitioner submits that the concentration of power in one body and more particularly, in one man, "violates fundamental notions of justice in civilized society." In re Oliver, supra at 280 (Rutledge, J., concurring). The right to a competent tribunal cannot be waived. A.B.A. Standards, Post-Conviction Remedies 36 (1968).

Petitioner reiterates that the failure of Petitioner's charging papers to apprise him of what he had to meet constitutes plain error. Silber, supra.

A written document serves as irrebuttable proof proper notice was given. Notice given by word of mouth is subject to confusion, distortion, and memory deficiencies.

QUESTION FIVE

Petitioner herein repeats those procedural arguments contained under questions one and two that are relevant to this question and incor-

porates them by reference.

At oral argument, Petitioner had been prepared to argue that the effect of the holdings of the proceedings below was to unconstitutionally deny him of the rights of due process and equal protection under the Fourteenth Amendment to the United States Constitution.

These arguments were raised implicitly by Petitioner in his continued insistence on the right to proceed with his libel and slander actions.

A question interfacing with question five warrants notice by this Court. When the law clerk repeated the slanderous material to his employer, who then repeated it to Attorney Harper and others, communication forming an independent basis upon which the actions were sustainable occurred. This communication was entirely unprivileged. Petitioner raised this point throughout his proceedings. (Answer: Brief in Opposition at 21-22; Exceptions: Appendix B.) The evidence supports this

claim. (See Panel Report: Petition at C-7 and C-8.)

As in Vachon v. New Hampshire, 414 U.S. 478 (1974), the complete disregard of the evidence on a crucial point constitutes a patent denial of due process.

CONCLUSION

The above fundamental constitutional violations are concentrated in a single proceeding. Petitioner has raised significant and substantial questions. No sufficient jurisdictional impediment exists to defeat the Court's power to review this case.

For the foregoing reasons, Petitioner respectfully submits that this Court has jurisdiction to grant the petition and requests that the writ issue.

Respectfully submitted,

John R. Harper, II
Counsel of Record

Sandi Perry
Legal Researcher

RULES OF COURT

B. Rule on Disciplinary Procedure

17. Review by Court

Upon failure of the Respondent to file exceptions to the Panel Report within the time hereinbefore prescribed, or after consideration of the return and such briefs as may have been filed in support of and in opposition to the same, and after hearing argument (if this Court shall desire to hear argument thereabout) this Court shall enter such Order upon the matter as it may find proper...

Appendix B

Rule 17

SUPREME COURT

Rule 17

Remittitur; petitions for rehearing

Section 1. The remittitur shall contain a copy of the judgment of the Court, shall be sealed with the seal and signed by the Clerk of the Court, and shall not be sent to the Court below until ten days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment or decree of the Court unless otherwise ordered by the Court.

Section 2. Petitions for rehearing must be filed before the judgment of this Court has been remitted to the Court below...

Appendix C

State of South Carolina County of Richland IN THE MATTER OF: William H. Edwards, Sr. and Larkin v. Campbell, Respondents.	IN THE SUPREME COURT E X C E P T I O N S

8. The Commissioners erred when they found in their Findings of Fact that Mr. Harper called Respondent Edwards and indicated that a complaint was going to be filed against Respondent Edwards by Mr. Ward for the assault, the error being that Mr. Harper testified that he called Respondent Edwards and advised him that Attorney Roy Bates had called him and told him that a complaint was going to be filed against Respondent Edwards by his law clerk for failing to accept the letters and for assaulting his law clerk.

9. The Commissioners erred when they found in their Findings of Fact that the Civil Complaint and Criminal Complaint were based solely on a letter sent by Mr. Ward to the Grievance Committee, the

error being that the Respondent Edwards testified that the matter was brought to his attention by Attorney John R. Harper, John Gibson and John Gibson's daughter prior to February 5 1982.

16. The Commissioners erred when they found in their Recommendations that Respondent Edwards initiated and knowingly maintained both the civil and criminal actions against Mr. Ward when the claims were unwarranted under existing law and when it was obvious that such actions were serving merely to harass or maliciously injure another in specific violation of DR7-102(A)(1 and 2), the error being that Respondent Edwards testified that the allegations of Tobias Ward were known to him prior to the filing of the Complaint and that Section 16-7-150 of the South Carolina Code gave Respondent Edwards the right to bring the criminal charges even if Mr. Tobias Ward had not filed his complaint with the Grievance Board.

17. The Commissioners erred when they found in their Recommendations that the panel likewise finds persuasive that the Respondent Edwards'

justification for the initiation of these lawsuits was inferentially, if not specifically retaliatory in nature, the error being that Respondent Edwards could have brought the lawsuits independent of the letter to the Grievance Board. Respondent Edwards testified that the complaint to the Grievance Board was retaliatory because he would not allow Mr. John Gibson to get out his contract and that Mr. John Gibson did not want Black lawyers to open an office in his community. Respondent Edwards testified that he did not believe that the disciplinary Rules should not be used by another lawyer for retaliation.

No. 83-119

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of	)	
	)	
WILLIAM HENRY EDWARDS,	)	**NOTARIZED**
	)	**STATEMENT**
Petitioner.	)	
	)	

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this Honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on October 20, 1983, he mailed forty (40) copies of the reply brief to the Honorable Clerk of the Supreme Court of the United States, by depositing aforesaid copies in the main United States post office in Columbia, S.C. with first-class postage pre-paid and properly addressed to the Clerk of

Court within the time allowed for filing.

4. That this statement is made and filed in accordance with Rule 28.2 of the Rules of the Supreme Court of the United States.

John R. Harper, II

John R. Harper, II
Post Office Box 843
Columbia, S.C. 29202
(803) 799-2798

October 20th, 1983

Columbia, South Carolina

Sworn to before me this

20th day of October, 1983

Larkin V. Campbell

Notary Public for South Carolina

My Commission Expires: 3/17/90

No. 83-119

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

In the Matter of WILLIAM HENRY EDWARDS, Petitioner.	NOTARIZED STATEMENT

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this Honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on October 20, 1983, he mailed three (3) copies of the reply brief to the Honorable T. Travis Medlock, lead counsel for the complainant below, by depositing aforesaid

copies in a mailbox located in the main United States post office in Columbia, South Carolina, with first-class postage prepaid and properly addressed to the Honorable T. Travis Medlock within the time allowed for filing.

4. That this statement is made and filed in accordance with Rules 28.3 and 28.5 of the Rules of the Supreme Court of the United States.

5. That all parties required to be served in this case have been served to wit:

The Honorable T. Travis Medlock
Attorney General of South Carolina
Post Office Box 11548
Columbia, South Carolina 29211

John R. Harper, II

Post Office Box 843
Columbia, S. C. 29202
(803) 799-2798

October 20th, 1983

Columbia, South Carolina

Sworn To Before Me This

20th Day of October, 1983.

Larkin V. Campbell

Notary Public for South Carolina

My Commission Expires: 3/17/90